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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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09/831,431 07/13/01 JACKWERTH

B H3739PCT/US

023657 HM12/0927  
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2500 RENAISSANCE BLVD., SUITE 200  
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EXAMINER

YII, G

ART UNIT

PAPER NUMBER

1619  
DATE MAILED:

09/27/01

**Please find below and/or attached an Office communication concerning this application or proceeding.**

**Commissioner of Patents and Trademarks**

# Office Action Summary

Application No.

09/831,431

Applicant(s)

JACKWERTH ET AL.

Examiner

Gina C. Yu

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1619

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 13 July 2001.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 11-22 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 11-22 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

## DETAILED ACTION

### *Claim Rejections - 35 USC § 103*

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

Claims 11 – 22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Prat et al. (U.S. Pat. No. 5,718,891) in view of Ponsati Obiols et al. (U.S. Pat. No. 5,880,299) and Inman et al. (U.S. Pat. No. 5,935,561).

Prat et al. teach using solid esterquats in water in the presence of dispersants, and optionally emulsifiers, for hair care products such as shampoos, rinses, setting lotions. See col. 1, line 11 - col. 5, line 33. Fatty alcohols, including cetyl and stearyl alcohol, isostearyl alcohol, or mixtures, are among the suitable dispersants for the invention. See col. 2, line 58 – col. 3, line 7. Cetostearyl alcohol with 20 – 25 moles of

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ethylene oxide for the suitable emulsifier, is also disclosed in col. 3, lines 53 – 67, which meets instant claims 16 and 17. The reference further teaches to use the esterquats in 10-90 % and emulsifier in 0-30% by weight of the final product, meeting instant claim 11, and further teaches that one skilled in the art would discover the necessary ratios of the dispersants and emulsifier without inventive activity. See col. 4, lines 49 – 64. The esterquat dispersion of the invention is said have improved dispersibility and stability in storage. See col. 1, lines 59 – 63. The reference lacks the teaching of oil components and explicit mention of employing the fatty alcohol and the fatty alcohol polyglycol ether of identical fatty acid residues.

Ponsati Obiols et al. teach esterquat-containing cosmetic compositions for hair and body. The reference also teaches the suitable oils for the invention, which overlap with the applicants' disclosure in spec. p. 4, line 31 – p. 5, line 19. See col. 5, lines 38 – 56. Fatty alcohols and fatty alcohol polyglycol ethers of the instant invention are also disclosed in col. 3, line 40 – col. 4, line 61. Tables also illustrate the examples of hair rinse formulations comprising esterquat and cetearyl alcohol, and Ceteareth-20, which meets instant claims 15, 17 – 19, and 21. The reference lacks the requirement of the oil components.

Inman et al teaches shampoo compositions comprising conditioning oil which provide the hair with luster, shine and soft hair feel when dried. See col. 1, lines 5 – 58; See col. 9, line 54 – col. 10, line 64 for the examples of oils used in the invention. Although the reference teaches to use about 0.05 – 3% of the oil, which does not meet

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instant claim 22, examiner views that one skilled in the art would have discovered the optimum weight range of the component by routine experiments.

Given the general teaching of the stable hair treatment composition with esterquat, dispersants and emulsifiers, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have looked to prior arts such as Ponsati Obiols et al. for the specific teachings dispersants and emulsifiers to successfully formulate the desired hair cosmetic compositions. The skilled worker would also have been motivated to modify the composition by adding the oil as taught by Inman et al. because of the expectation of successfully producing hair care composition which provide shine and soft feel to hair after the application.

### ***Conclusion***

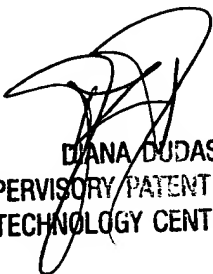
The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. See Flick, Cosmetic and Toiletry Formulations, p. 183 (teaching water-in-oil hair glosser and conditioning compositions). Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gina C. Yu whose telephone number is 703-305-3593.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Diana Dudash can be reached on 703-308-2328. The fax phone numbers for the organization where this application or proceeding is assigned are 703-308-4242 for regular communications and 703-308-4242 for After Final communications.

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Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-1234.

Gina C. Yu  
Patent Examiner  
September 24, 2001



**DIANA DUDASH**  
**SUPERVISORY PATENT EXAMINER**  
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